

(5) If any locomotives fail to meet all standards, we may require you to test one additional locomotive for each locomotive that fails. You may choose to accept that your part is causing an emission problem rather than continuing testing. You may also test additional locomotives at any time. We will consider failure rates, average emission levels and the existence of any defects among other factors in determining whether to pursue remedial action. We may order a recall pursuant to 40 CFR part 1068 before you complete testing additional locomotives.

(6) You may ask us to allow you to rely on testing performed by others instead of requiring you to perform testing. For example, if a railroad tests a locomotive with your component as part of its testing under §1033.810, you may ask to submit those test data as fulfillment of your test obligations under this paragraph (d). If a given test locomotive uses different components certified under this section that were manufactured by different manufacturers (such as rings from one manufacturer and cylinder liners from another manufacturer), a single test of it may be counted towards both manufacturers' test obligations. In unusual circumstances, you may also ask us to grant you hardship relief from the testing requirements of this paragraph (d). In determining whether to grant you relief, we will consider all relevant factors including the extent of the financial hardship to your company and whether the test data are available from other sources, such as testing performed by a railroad.

(e) Components certified under this section may be used when remanufacturing Category 2 engines under 40 CFR part 1042.

[73 FR 37197, June 30, 2008, as amended at 73 FR 59190, Oct. 8, 2008; 74 FR 8425, Feb. 24, 2009]

**§ 1033.650 Incidental use exemption for Canadian and Mexican locomotives.**

You may ask us to exempt from the requirements and prohibitions of this part locomotives that are operated primarily outside of the United States and that enter the United States temporarily from Canada or Mexico. We

will approve this exemption only where we determine that the locomotive's operation within the United States will not be extensive and will be incidental to its primary operation. For example, we would generally exempt locomotives that will not operate more than 25 miles from the border and will operate in the United States less than 5 percent of their operating time. For existing operations, you must request this exemption before January 1, 2011. In your request, identify the locomotives for which you are requesting an exemption, and describe their projected use in the United States. We may grant the exemption broadly or limit the exemption to specific locomotives and/or specific geographic areas. However, we will typically approve exemptions for specific rail facilities rather than specific locomotives. In unusual circumstances, such as cases in which new rail facilities are created, we may approve requests submitted after January 1, 2011.

**§ 1033.652 Special provisions for exported locomotives.**

(a) *Uncertified locomotives.* Locomotives covered by an export exemption under 40 CFR 1068.230 may be introduced into U.S. commerce prior to being exported, but may not be used in any revenue generating service in the United States. Locomotives covered by this paragraph (a) may not include any EPA emission control information label. Such locomotives may include emission control information labels for the country to which they are being exported.

(b) *Locomotives covered by export-only certificates.* Locomotives may be certified for export under 40 CFR 1068.230. Such locomotives may be introduced into U.S. commerce prior to being exported, but may not be used in any revenue generating service in the United States.

(c) *Locomotives included in a certified engine family.* Except as specified in paragraph (d) of this section, locomotives included in a certified engine family may be exported without restriction. Note that §1033.705 requires that exported locomotives be excluded from emission credit calculations in certain circumstances.

(d) *Locomotives certified to FELs above the standards.* The provisions of this paragraph (d) apply for locomotive configurations included in engine families certified to one or more FELs above any otherwise applicable standard. Individual locomotives that will be exported may be excluded from an engine family if they are unlabeled. For locomotives that were labeled during production, you may remove the emission control information labels prior to export. All unlabeled locomotives that will be exported are subject to the provisions of paragraph (a) of this section. Locomotives that are of a configuration included in an engine family certified to one of more FELs above any otherwise applicable standard that include an EPA emission control information label when exported are considered to be part of the engine family and must be included in credit calculations under § 1033.705. Note that this requirement does not apply for locomotives that do not have an EPA emission control information label, even if they have other labels (such as an export-only label).

[75 FR 22986, Apr. 30, 2010]

**§ 1033.655 Special provisions for certain Tier 0/Tier 1 locomotives.**

(a) The provisions of this section apply only for the following locomotives (and locomotives in the same engine families as these locomotives):

(1) Locomotives listed in Table 1 of this section originally manufactured 1986–1994 by General Electric Company that have never been equipped with separate loop aftercooling. The section also applies for the equivalent passenger locomotives.

TABLE 1 TO § 1033.655

8–40C .....	P32ACDM
8–40B .....	P42DC
8–32B .....	8–40BPH
8–40CW .....	P40DC
8–40BW .....	8–32BWH
8–40CM .....	C39–8
8–41CW .....	B39–8E
8–44CW .....	

(2) SD70MAC and SD70IAC locomotives originally manufactured 1996–2000 by EMD.

(b) Any certifying remanufacturer may request relief for the locomotives covered by this section.

(c) You may ask us to allow these locomotives to exceed otherwise applicable line-haul cycle NO<sub>x</sub> standard for high ambient temperatures and/or altitude because of limitations of the cooling system. However, the NO<sub>x</sub> emissions may exceed the otherwise applicable standard only to the extent necessary. Relief is limited to the following conditions:

(1) For General Electric locomotives, you may ask for relief for ambient temperatures above 23 °C and/or barometric pressure below 97.5 kPa (28.8 in. Hg). NO<sub>x</sub> emissions may not exceed 9.5 g/bhp-hr over the line-haul cycle for any temperatures up to 105 °F and any altitude up to 7000 feet above sea level.

(2) For EMD locomotives, you may ask for relief for ambient temperatures above 30 °C and/or barometric pressure below 97.5 kPa (28.8 in. Hg). NO<sub>x</sub> emissions may not exceed 8.0 g/bhp-hr over the line-haul cycle for any temperatures up to 105 °F and any altitude up to 7000 feet above sea level.

(d) All other standards and requirements in this part apply as specified.

(e) To request this relief, submit to the Designated Compliance Officer along with your application for certification an engineering analysis showing how your emission controls operate for the following conditions:

(1) Temperatures 23–40 °C at any altitude up to 7000 feet above sea level.

(2) Altitudes 1000–7000 feet above sea level for any temperature from 15–40 °C.

**Subpart H—Averaging, Banking, and Trading for Certification**

**§ 1033.701 General provisions.**

(a) You may average, bank, and trade (ABT) emission credits for purposes of certification as described in this subpart to show compliance with the standards of this part. Participation in this program is voluntary.

(b) Section 1033.740 restricts the use of emission credits to certain averaging sets.

(c) The definitions of Subpart J of this part apply to this subpart. The following definitions also apply: